

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Request for Waiver by Cingular Wireless LLC	)	
	)	
Petition for Reconsideration of Cingular	)	
Wireless LLC	)	
To: Chief, Enforcement Bureau		
Chief, Wireless Telecommunications Bureau		

**SUPPLEMENT TO FIRST QUARTERLY E911 IMPLEMENTATION REPORT AND  
PETITION FOR RECONSIDERATION**

Cingular Wireless LLC ("Cingular"), on behalf of its subsidiaries and affiliates,<sup>1</sup> hereby supplements its First Quarterly E911 Implementation Report,<sup>2</sup> as requested by the Enforcement Bureau ("Bureau"),<sup>3</sup> and its pending Petition for Reconsideration.<sup>4</sup> The Bureau has requested that Cingular provide additional information in four areas, the first of which is directly relevant

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<sup>1</sup> Throughout this filing, the term Cingular is used to refer to Cingular, its predecessors-in-interest, subsidiaries, and affiliates.

<sup>2</sup> Cingular Wireless LLC First Quarterly E911 Implementation Report, CC Docket No. 94-102, at 2, 4 (Feb. 1, 2002) ("First Quarterly Report").

<sup>3</sup> Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, to Brian F. Fontes, Vice President, Federal Relations, Cingular Wireless LLC (Mar. 26, 2002) ("Casey Letter").

<sup>4</sup> Cingular Wireless LLC, Petition for Reconsideration, CC Docket No. 94-102, at 2-7 (filed Nov. 13, 2001) ("Petition").

to Cingular's pending Petition of the *Waiver Order* referenced in the Bureau's letter.<sup>5</sup> Because the Petition has been pending since November 13, 2001, Cingular also updates the record to reflect recent case law, Commissioner statements, and related legal issues.<sup>6</sup>

- (1) Provide a detailed explanation as to why Cingular has not begun selling and activating E-OTD capable handsets and ensuring that the handsets provide location information with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls. To the extent that you cite vendor failure or delay in providing necessary equipment, state the date(s) on which Cingular became aware that its handset vendor(s) would not meet their deadlines for delivery of E-OTD capable handsets. Further, explain precisely what steps Cingular took to secure the handsets in time to comply with the E911 Phase II rules and the October 12, 2001, waiver order, including any efforts to provide incentives to manufacturers to provide necessary equipment in a timely fashion.**

#### *Background*

In the *Waiver Order*, the Commission recognized that it was notified by Cingular, prior to the October 1, 2001 handset deployment benchmark, that it would be impossible to begin deploying and activating E-OTD handsets by that deadline due to changes in position by vendors regarding handset availability.<sup>7</sup> The Commission (i) refused to consider this evidence, (ii) required Cingular to comply with the deadline, and (iii) referred the matter to the Bureau to determine "whether Cingular failed to comply with the October 1, 2001 deadline."<sup>8</sup> Cingular

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<sup>5</sup> Casey Letter at 1 (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18305, 18315 (2001) ("*Waiver Order*")).

<sup>6</sup> See *infra* pages 10 - 13. The Petition for Reconsideration proceeding has been classified as "permit-but-disclose." See *Public Notice*, "Cingular, Nextel, and Verizon File Petitions for Reconsideration of Commission Orders on Wireless E911 Phase II Waiver Requests," CC Docket No. 94-102, DA 01-2722 (rel. Nov. 20, 2001).

<sup>7</sup> *Waiver Order*, 16 FCC Rcd at 18313.

<sup>8</sup> *Id.*

sought reconsideration and again set forth the facts surrounding its inability to meet the October 1, 2001 deadline.<sup>9</sup>

Cingular's First Quarterly Report cross-referenced the Petition which explained in greater detail Cingular's inability to comply with the deadline.<sup>10</sup> It is unclear whether the Bureau has considered the Petition as part of this inquiry. Regardless, the Petition is highly relevant to the inquiry. In addition to providing important facts, it demonstrated that the Commission should rescind Cingular's referral to the Bureau with regard to Phase II compliance<sup>11</sup> as a matter of law. Among other things, the Petition raised the following legal issues:

- Whether the Commission could require Cingular to comply with a deployment schedule that the FCC knew was impossible to satisfy;<sup>12</sup>
- Whether the Commission could ignore evidence of technological impossibility;<sup>13</sup>
- Whether the Commission had adopted a "strict liability" standard for E911 compliance and could legally do so;<sup>14</sup>
- Whether the Commission had articulated any E911 waiver standard given its discriminatory treatment of like service providers;<sup>15</sup> and
- Whether the Commission had failed to give Cingular's waiver request the "hard look" required by *WAIT Radio*.<sup>16</sup>

If these issues are resolved in favor of Cingular, the current inquiry will be moot. Thus, Cingular again incorporates by reference its Petition and related filings.<sup>17</sup> Cingular also provides

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<sup>9</sup> Petition at 2-10.

<sup>10</sup> First Quarterly Report at 2, 4.

<sup>11</sup> Petition at 15-17.

<sup>12</sup> *Id.* at 10-15.

<sup>13</sup> *Id.* at 11-15.

<sup>14</sup> *Id.* at 22-24.

<sup>15</sup> *Id.* at 17-22.

<sup>16</sup> *Id.* at 18-19.

additional information regarding its decision to utilize E-OTD as its Phase II E911 solution and updates the record to include two decisions released by the United States Court of Appeals for the District of Columbia Circuit after Cingular's Petition was filed. These decisions and a recent statement by Commissioner Martin are directly relevant to the applicable legal standard, Cingular's impossibility defense, and whether the Commission can hold a carrier strictly liable for violating its rules without prior notice.

*Facts Regarding E-OTD Deployment*

On November 9, 2000, Cingular submitted its first E911 Implementation Report to the Commission and indicated that “[n]one of the location-technologies strictly met the relevant FCC accuracy mandate (network or handset) in all environments.”<sup>18</sup> Nevertheless, Cingular indicated that it was pursuing A-GPS handsets as its Phase II solution for its GSM networks and that it would “be compliant with the FCC schedule for handset deployment, *contingent upon the availability of handsets from manufacturers.*”<sup>19</sup>

In late December 2000, Cingular was informed that Ericsson would not be able to deliver an A-GPS GSM handset in third quarter 2001 as originally promised. In January 2001, Cingular was informed that Nokia would not be incorporating A-GPS into its GSM handsets, but would be incorporating E-OTD functionality into handsets that would be available in third quarter 2001.

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<sup>17</sup> See *Public Notice*, “Cingular, Nextel, and Verizon File Petitions for Reconsideration of Commission Orders on Wireless E911 Phase II Waiver Requests,” CC Docket No. 94-102, DA 01-2722 (rel. Nov. 20, 2001); Sprint Spectrum L.P. Comments, CC Docket No. 94-102, at 3-4 (Dec. 14, 2001) (claiming that the Commission could not have adopted a strict liability standard for determining Phase II E911 compliance).

<sup>18</sup> Cingular Wireless LLC, Report on Implementation of Wireless E911 Phase II ALI, at 2 (Nov. 9, 2000).

<sup>19</sup> *Id.* at 4 (emphasis added).

No other GSM handset manufacturer was willing or able to provide A-GPS handsets prior to the Commission's October 1, 2001 deadline.

As a result of these developments, Cingular began reevaluating the use of E-OTD as a Phase II solution – a solution that the Commission had previously classified as possibly “the only method available to GSM carriers for compliance with Phase II for some time.”<sup>19</sup> On January 30, 2001, Cingular notified the Commission that A-GPS might not be a viable solution for its GSM networks due to the unavailability of handsets.<sup>20</sup>

On February 27, 2001, Cingular had a lengthy meeting with Nokia and was informed that three Nokia handsets would have E-OTD capability in 2001. Shortly thereafter, Cingular met with members of the Wireless Telecommunications Bureau to discuss possible Phase II solutions for its GSM markets. Cingular indicated that it was considering deploying E-OTD handsets because the handsets were scheduled to be commercially available prior to the Commission's October 1, 2001 deadline.<sup>21</sup> Cingular noted that it continued to favor A-GPS as a solution because of purported accuracy benefits, but was reconsidering the viability of this technology as a Phase II solution on its GSM networks due to vendor statements that A-GPS handsets would not be available until 2003.<sup>22</sup> A follow-up meeting with the Wireless Telecommunications Bureau (“WTB”) occurred on March 29 to discuss E-OTD as a Phase II solution.<sup>23</sup> During this

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<sup>19</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd. 17442, 17462 (2000) (“*Fourth MO&O*”).

<sup>20</sup> Cingular *Ex Parte* Presentation, CC Docket No. 94-102, at 1 (Jan. 30, 2001).

<sup>21</sup> Cingular *Ex Parte* Presentation, CC Docket No. 94-102, at 1 (Mar. 12, 2001).

<sup>22</sup> *Id.*

<sup>23</sup> Cingular *Ex Parte* Presentation, CC Docket No. 94-102, at 1 (Apr. 2, 2001).

meeting, the parties specifically discussed *the need for a waiver if E-OTD handsets were not available prior to October 1, 2001*.<sup>24</sup>

In April, Motorola informed Cingular that handset manufacturers and GSM carriers were focusing on E-OTD as a Phase II solution, rather than A-GPS, and that Motorola planned on having E-OTD handsets available prior to October 1, 2001. Motorola anticipated that it would have E-OTD handsets commercially available on September 15, 2001. Shortly thereafter, Cingular was informed that the conservative estimate for commercial availability of E-OTD handsets from Nokia was August 2001.

On June 12, 2001, Nokia confirmed that at least one E-OTD handset model would be available in August 2001. In July, Nokia stated that four E-OTD handset models would be available in fourth quarter 2001, assuming the availability of labs for interoperability and handset validation testing. Cingular also was informed that live network testing of these handsets would occur on Nokia's networks and the network of at least one other carrier.

On July 6, 2001, Cingular requested a waiver of the Commission's Phase II E911 rules to deploy E-OTD handsets.<sup>25</sup> A waiver was necessary because E-OTD was not yet capable of satisfying the Commission's accuracy requirements for handset-based solutions. Cingular did not request a waiver of the deployment deadline, however, because two vendors had continued to commit to the availability of a handset by the October 1, 2001 deadline and a variety of vendors committed to the commercial availability of E-OTD handsets by the fourth quarter 2001.

On September 15, 2001, Motorola was unable to supply E-OTD handsets for commercial distribution as promised, due to the unavailability of vendor labs for testing. Motorola informed

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<sup>24</sup> *Id.*

<sup>25</sup> Cingular Wireless LLC, Petition for Limited Waiver of Sections 20.18(e)-(h), CC Docket No. 94-102 (July 6, 2001) ("*GSM Waiver Request*").

Cingular that it had gained access to these labs for testing on September 11, 2001, but told Cingular that these handsets would not be publicly distributed until further testing was completed on Cingular's networks.

On September 19, 2001, Nokia informed Cingular that it would be unable to meet the October 1, 2001 deadline. On Friday, September 21, 2001, Cingular received one E-OTD handset model from Nokia for testing, but Nokia again indicated that it opposed public distribution of handsets without live network testing. Because no E-OTD capable networks existed for testing, it was impossible to satisfy the October 1st deadline.

On the afternoon of September 21st, Cingular attempted to contact the WTB to inform the FCC that it would be unable to satisfy the October 1, 2001 deadline due to equipment unavailability. A message was left with a senior WTB official to contact Cingular as soon as possible to discuss this issue.

Cingular's call was returned on Monday, September 24, 2001 and the parties discussed the equipment unavailability issue with WTB staff. The WTB was skeptical because no other GSM carrier had raised the issue and thus urged Cingular to verify its information and supply a revised deployment schedule based on new vendor commitments, if possible. Cingular remained in daily contact with the FCC throughout this week, but was unable to obtain concrete information regarding the commercial availability of E-OTD handsets from its vendors. Consistent with discussions with FCC staff, Cingular notified the Commission in writing on September 28, 2001 that it would be impossible to deploy E-OTD handsets by October 1, 2001

and that it would propose a new E-OTD deployment schedule once reliable information was obtained from vendors regarding availability.<sup>26</sup>

On October 12, 2001, the Commission released the *Waiver Order* refusing to consider the information regarding equipment unavailability and determined that Cingular would be required to begin deploying and activating E-OTD capable handsets as of October 1, 2001.<sup>26</sup> Cingular timely sought reconsideration of this decision on November 13, 2001.

As the foregoing demonstrates, Cingular's decision to deploy E-OTD was premised upon numerous vendor commitments that handsets would be commercially available prior to October 1, 2001. Given these commitments, incentives were not necessary to spur handset manufacturers into production. When a variety of manufacturers indicate a product will be available by a date certain, it would be fiscally irresponsible to offer incentives for manufacturers to live up to their promises.<sup>27</sup> In any event, the marketplace provides tremendous incentives for handset manufacturers. Over the course of the next two years, Cingular will spend billions of dollars on GSM phones and handset manufacturers will rapidly lose market share if they are unable to produce the E-OTD capable handsets that Cingular must deploy to satisfy the Commission's rules. If a handset manufacturer lags behind in the production of these handsets, it will lose market share.

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<sup>26</sup> Letter from Brian Fontes, Vice President, Federal Relations, Cingular, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 94-102 (Sept. 28, 2001) ("Fontes Letter"); see *Waiver Order*, 16 FCC Rcd at 18313.

<sup>26</sup> *Waiver Order*, 16 FCC Rcd at 18314-15.

<sup>27</sup> For example, Cingular doubts that a new car buyer would offer a car dealer incentives and premiums merely to deliver a vehicle on the date the vendor promised to deliver it without incentives.



These marketplace incentives have worked. E-OTD capable, GSM handsets have been produced and are available for testing. Before a handset is made commercially available, it must be tested in vendor labs and on the network infrastructure used by the carrier.<sup>28</sup> Lab testing has already been completed for three E-OTD handset models by two different vendors. The bottleneck to commercial availability has been the absence of live networks capable of testing these handsets. Cingular utilizes Ericsson infrastructure and has made the modifications to its Ericsson infrastructure necessary to test E-OTD handsets in one market. Live network testing of handsets should commence early next month. With respect to testing on Nokia infrastructure, which Cingular plans on utilizing in the near future, Cingular and VoiceStream have agreed to jointly test handsets on the first available network utilizing Nokia infrastructure. VoiceStream anticipates it will have completed the upgrades necessary to test in one market by June 5, 2002. In the event this does not occur, Cingular expects to have deployed the Nokia infrastructure necessary to commence testing in one market by late June 2002.

This testing schedule will ensure that E-OTD handsets are commercially available by September 1, 2002.<sup>29</sup> Thereafter, as demonstrated in its Petition, Cingular would deploy E-OTD handsets at the following rate:

- 50% of all GSM handsets sold in Cingular's markets will be E-OTD capable by February 28, 2003;
- 100% of all GSM handsets sold in Cingular's markets will be E-OTD capable by June 30, 2003; and
- 95% of Cingular's GSM customers will have location-capable handsets by December 31, 2005.<sup>30</sup>

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<sup>28</sup> *GSM Waiver Request* at 27 n.79 (discussing handset testing on live infrastructure).

<sup>29</sup> Petition at 16.

<sup>30</sup> *Id.*

Cingular has put pressure on its infrastructure vendors to ensure that these deadlines can be satisfied. Specifically, Cingular has made clear to each infrastructure vendor that *it will not purchase or accept any products that lack E-OTD capability*.

#### *Recent Legal Developments*

Cingular's Petition demonstrated that the legal standards adopted in the *Waiver Order* are problematic because they are inconsistent.<sup>31</sup> For example, paragraph 26 of the *Waiver Order* indicates that waivers could be obtained in extraordinary circumstances, yet in the very next paragraph the Commission indicates that the unavailability of compliant products "will not excuse non-compliance."<sup>32</sup> Despite the language indicating that equipment unavailability will not excuse non-compliance, two of the four Commissioners have indicated just the opposite.<sup>33</sup> Most recently, Commissioner Martin stated that carriers were unlikely to obtain extensions of the E911 deadlines unless compliance "is beyond their control, like the vendors' not being able to deliver their products."<sup>34</sup> Accordingly, it is virtually impossible to decipher the standard for assessing compliance with the E911 rules.

The Petition also demonstrates that it was error for the Commission to adopt a strict liability standard with regard to Cingular's future compliance with the Commission's E911 rules which does not allow a carrier to escape liability for noncompliance due to factors beyond its

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<sup>31</sup> *Id.* at 17-24.

<sup>32</sup> *Waiver Order*, 16 FCC Rcd at 18313-14. The order also "deems" Cingular non-compliant for missing the October 1, 2001 deadline, but then refers the question of whether Cingular was non-compliant to the Bureau. *Id.*

<sup>33</sup> See *Waiver Order* at 18321, Separate Statement of Commissioner Kathleen Abernathy; "FCC's Martin Stresses Implementation, Enforcement of E911," *Communications Daily*, at 2 (Mar. 28, 2002) ("*Martin Article*").

<sup>34</sup> *Martin Article* at 2.

control (*e.g.*, deadline impossible to meet because equipment unavailable).<sup>35</sup> Cingular also showed that it was unclear what waiver standard the Commission was following.<sup>36</sup> The Bureau's current inquiry appears to indicate that the "extraordinary circumstances" waiver standard goes well beyond the traditional "good cause" standard.<sup>37</sup> Question 1 implies that carriers will only be entitled to relief from the Phase II requirements if they can prove they pursued every possible option imaginable (*e.g.*, were incentives offered to manufacturers, could a decision have been made earlier, could a different technology have been selected). Such a standard is impossible to satisfy and amounts to an unannounced "no waiver" standard.<sup>38</sup>

The United States Court of Appeals for the District of Columbia Circuit recently released two decisions that are also relevant to the Bureau's current inquiry and the arguments raised in Cingular's Petition: *High Plains Wireless v. FCC*, No. 00-1292 (rel. Jan. 11, 2002); *United States Telecom Association v. FBI*, No. 00-5386 (rel. Jan. 18, 2001). In *High Plains*, the court agreed with the FCC that it would be inappropriate to penalize a carrier for non-compliance with a rule that did not give clear notice that the carrier's conduct was prohibited.<sup>39</sup> In support of its conclusions, the Court cited *Satellite Broad. Co. v. FCC*, 824, F.2d 1, 3 (D.C. Cir. 1987):

Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule.

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<sup>35</sup> Petition at 10-24.

<sup>36</sup> *Id.* at 17-22.

<sup>37</sup> See 47 C.F.R. §§ 1.3; 1.925; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>38</sup> *WAIT Radio*, 418 F.2d at 1157 (general rulemaking authority and the availability of waivers are inextricably linked).

<sup>39</sup> *High Plains Wireless v. FCC*, No. 00-1292, Slip Op. at 6-7 (rel. Jan. 11, 2002).

Cingular specifically raised the due process issue in its Petition with regard to the adoption of an E911 strict liability standard.<sup>40</sup> In addition, *High Plains* makes clear that the actual *application* of that standard without prior notice also violates due process. The *Waiver Order* was the first time the FCC gave notice that a carrier would be held strictly accountable for noncompliance if a deadline (e.g., October 1, 2001) was missed due to factors beyond its control.<sup>41</sup> The Commission also indicated for the first time that evidence of equipment unavailability would only be relevant for purposes of determining the penalty for violations. These notice failures were clear error under *High Plains*.<sup>42</sup>

If waivers are available, Question 1 further obscures the standard.<sup>43</sup> It fails to clarify whether the “extraordinary circumstances” standard is the same as the one announced in the *Fourth MO&O* which indicated that E911 waivers would be granted where the request: (1) is “specific, focused and limited in scope,” (2) comes as close as possible to full compliance, and (3) provides “a clear path to full compliance.”<sup>44</sup> Clearly, equipment unavailability would fall within this latter standard. The *Waiver Order* appeared to render the subject irrelevant, yet Question 1 inquires into the matter. Accordingly, the Commission must reconsider its adoption

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<sup>40</sup> Petition at 22-24.

<sup>41</sup> See *Waiver Order* at 18313-14.

<sup>42</sup> See also *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 628-32 (D.C. Cir. 2000) (vacating an FCC decision revoking a license for noncompliance because the FCC failed to provide fair notice of the meaning of the regulation with which the licensee failed to comply); *Radio Athens, Inc. (WATH) v. FCC*, 401 F.2d 398, 404 (D.C. Cir. 1968) (holding that “elementary fairness compels clarity” in regulations).

<sup>43</sup> *Id.* at 18314.

<sup>44</sup> *Fourth MO&O* at 17457-58.

of the “extraordinary circumstances” waiver standard.<sup>45</sup> If the FCC is departing from its rules or prior decisions, it must expressly acknowledge that fact and explain the rationale for the departure.<sup>46</sup>

Finally, in *United States Telecom Ass’n v. FBI*, the court vacated certain CALEA requirements imposed by the FBI because “unrebutted evidence in the record suggests that it would be impossible for carriers to [comply] in such a short time period.”<sup>47</sup> This decision supports Cingular’s position that the Commission’s October 1, 2001 deployment deadline could not be met because compliant equipment was not available and, thus, the deadline could not be enforced.<sup>48</sup>

- (2) For all pending Phase I and Phase II requests, indicate whether Cingular believes that the request is valid under *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order, 16 FCC Rcd 18982 (2001). Also explain how Cingular determined which of the PSAP requests are valid.**

*Phase I PSAP Requests:* For the purpose of evaluating the validity of a PSAP’s request for E911 Phase I service, Cingular considered each request to be valid at the time it was received. This approach was used in order to avoid delay and to initiate timely discussion with the applicable Public Safety Answering Point (“PSAP”) regarding planning and implementation. Although Cingular has not classified any Phase I request as invalid, certain PSAP requests were

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<sup>45</sup> See *High Plains*, Slip Op. at 7; see also *Northeast Cellular Tel. Co., L.P., v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (stating that the agency must clearly articulate its waiver standard).

<sup>46</sup> See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970).

<sup>47</sup> *United States Telecom Ass’n v. FBI*, No. 00-5386, Slip Op. at 8 (rel. Jan. 18, 2001)

<sup>48</sup> See Petition at 10-15.

put “on hold” because of a number of factors noted in the First Quarterly Report.<sup>49</sup> Attachment C to that report demonstrated the extensive efforts necessary to satisfy a PSAP request for Phase I and highlighted that successful implementation requires the cooperation of Cingular, the appropriate Local Exchange Carrier (“LEC”), the applicable PSAP, and various vendors.

Cingular has endeavored to move each PSAP request to a successful conclusion by effecting those steps within its control and, where possible, aiding others in realizing the steps that they had to take. If the completion of a required step is delayed or an action item cannot be fulfilled by a party other than Cingular, Cingular has put the request “on hold” until that item can be completed. However, the “hold” status does not amount to Cingular deciding that the underlying Phase I request is not valid.<sup>50</sup>

*Phase II PSAP Requests:* Cingular agrees with the Commission’s sentiment expressed in the City of Richardson Order “that promoting cooperation and good faith negotiations between all of the parties is the best approach to ensuring a timely and effective roll-out of E911 service.”<sup>51</sup> Accordingly, Cingular currently considers every PSAP request for Phase II service from its GSM networks to be valid.

To further good faith deployment negotiations, Cingular developed the Wireless E911 Phase II PSAP Profile Form. This form, which was included as Attachment A to the First

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<sup>49</sup> The various reasons were detailed in Attachment B to the First Quarterly Report and examples of those reasons were described in the First Quarterly Report at 2-3. Attachment C to the First Quarterly Report also provided illustrative steps of the process that leads to the completion and implementation of an E911 Phase I request.

<sup>50</sup> In a few instances, the requesting PSAP/jurisdiction has withdrawn a Phase I request. In these situations, the requests are no longer “pending” and have been removed from Cingular’s project list.

<sup>51</sup> See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, Order*, FCC 01-293, rel. Oct. 17, 2001, at 4 (“City of Richardson Order”).

Quarterly Report, requests the information deemed relevant by the City of Richardson Order for determining the validity of a request for Phase II service.<sup>52</sup> The Profile also requests additional information, *e.g.*, Item 7, the type of customer premise equipment or phone system, which will facilitate Cingular's implementation of the request. Cingular began mailing the Profile to PSAPs that had requested Phase II service in early February. These profiles are being used to evaluate the validity of each request. If Cingular determines that a Phase II request is invalid, it will note that determination in its next quarterly report.

Initial review of the returned Profiles revealed one situation in which the PSAP indicated that it was not ordering an upgrade to its CPE until late third quarter 2002.<sup>53</sup> The upgraded facilities will not be turned up for service until March 2003. Cingular and the PSAP have agreed to modify the request date to match the CPE order date. It was not in the best interest of either the PSAP or Cingular for Cingular to characterize the request as invalid. Rather, a modification of the request date means that progress toward implementation can be made even during the period when the request technically would otherwise be invalid.

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<sup>52</sup> Item 11 asks if a funding mechanism is in place for the PSAP to recover its Phase II costs. *See City of Richardson Order* at 5. Item 8 asks which equipment the PSAP will use to translate latitude and longitude coordinates into location and address and Item 9 asks if the mapping equipment and software have been installed and tested, along with copies of the applicable order or correspondence. *See id.* at 5. Item 10 asks if the PSAP has requested the necessary facilities from the LEC to enable the PSAP to receive the Phase II data including upgrade to the ALI database and PAM interface with re-query capability, plus a copy of such request. *See id.* at 5-6.

<sup>53</sup> Many of the profiles received to date are very complete, including copies of purchase orders and requests to the LEC for ALI database upgrades. Others appear to be invalid, yet follow-up discussions are underway to facilitate timely implementation.

**(3) Explain why Cingular believes that negotiation of service agreements is a basis for placing requests for Phase I service on hold.**

The rights and obligations surrounding the implementation of any complex multi-million dollar undertaking, like the delivery of E911 Phase I and II services potentially to more than fourteen hundred PSAPs, should be reduced to writing and agreed among the parties. The fact that these particular arrangements involve the delivery of life saving services heightens the importance and necessity of clarity in the roles and responsibilities of the parties. Nowhere to Cingular's knowledge has the Commission stated or explained that this particular type of transaction deserves less clarity than what is commonly accepted, if not required, in equivalent commercial transactions.

The Commission has repeatedly stressed that "negotiation between the parties" is the best means to pursue expeditious rollout of E911 services and that Commission staff is available to resolve any disagreement that may become an impediment to a speedy rollout of E911 services. This process presumably covers impasses resulting from service agreements.

Historically, state and local government bodies that deliver emergency services have dealt with local exchange carriers ("LECs") when arranging for the underlying telecommunications facilities and services needed to support their emergency services. Because of this long-standing PSAP relationship with wireline service providers, state and local governments often view wireless technology through the same prism. Wireless capabilities and limitations are quite different from wireline capabilities and limitations, though. Despite these differences, many PSAP wireless E911 contracts, regulations and policies are simply inappropriate wireline make-overs not reflecting the differences in technology. The resulting unnecessary confusion can be cleared up through a written service agreement.



Additionally, LECs and PSAPs have historically benefited from E911 contractual clarity through the tariff process. One reason, among others, the Commission has failed to hear resistance to that contractual process is because state regulatory bodies approve the “public E911 contract”, *i.e.* the LEC’s tariff. While the competitive wireless industry is not subject to E911 tariffs, the fact remains that the wireless rollout of E911 services deserves the same contractual clarity expected with regard to wireline E911 services.

Although the overwhelming majority of PSAPs have expressed no concerns over signing E911 service order agreements, a limited number of PSAPs have had reservations about negotiating an E911 service agreement. Cingular has worked tirelessly with PSAPs to resolve any potential concerns. The original E911 service agreement was revised to be essentially a “call routing decisions and responsibilities” document. Cingular subsequently removed legal boilerplate in reliance on state and federal laws when available. For a PSAP that philosophically refuses to sign any form of service agreement, Cingular has even gone to the point of requesting that it merely sign a form indicating that it declines to sign the attached service order agreement.

**(4) Explain why Phase I service has not been implemented in the following Arkansas counties: Carroll, Chicot, Conway, Craighead, Cross, Greene, Jefferson, Phillips, and Saline.**

Cingular’s First Quarterly Report indicated that certain Phase I requests from Arkansas were beyond the six month window and an explanation as to why these requests had not been deployed was missing from Attachment B. This missing data was an oversight. Cingular has attached an updated status report for the entire state of Arkansas that includes explanations as



**Attachment G**

**CINGULAR WIRELESS PHASE I IMPLEMENTATION STATUS - ARKANSAS**

## Cingular Wireless Phase I Implementation Status - Arkansas

As of 12/31/01

County	Status	Phase I Service Requested	Phase I Turn-up date	Phase I Request with work in progress	Phase I Request on hold	Phase I Request completed in 6 mo window	If not deployed, why not?	Who are we waiting for?	Phase II Service Requested
Arkansas Co							no request	County	
Ashley Co							no request	County	
Baxter County	3	04/23/01			yes		County has not signed agreement	County	
Benton County	1	03/01/01	11/30/01						
Boone County	3	06/04/01			yes		County has not signed agreement	County	
Bradley County							no request	County	
Calhoun County							no request	County	
Carroll County	2	07/09/01		yes			Working on facility orders and translation issues with LEC		
Chicot County	2	06/15/01		yes			Working on facility orders and translation issues with LEC		
Clark County	3	03/22/01			yes		County has not signed agreement	County	
Clay County							no request	County	
Cleburne County							no request	County	
Cleveland County							no request	County	
Conway County	2	06/13/01		yes			Working on facility orders and translation issues with LEC		
Craighead County	2	06/15/01		yes			Working on facility orders and translation issues with LEC		
Crawford County	3	04/16/01			yes		County has not signed agreement	County	
Cross County	2	06/15/01		yes			Working on facility orders and translation issues with LEC		
Dallas County	4	09/24/01		yes			Within 6 month window		
Desha County	4	10/03/01		yes			Within 6 month window		
Drew County							no request	County	
Faulkner County							no request	County	
Franklin County							no request	County	
Fulton County							no request	County	
Garland County	3	04/19/01			yes		County has not signed agreement	County	
Grant County							no request	County	

Status: 1-Deployed; 2-Cingular Past 6 Mo. Window; 3-PSAP or LEC past 6 Mo. Window; 4-Request within 6 Mo. Window

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## Cingular Wireless Phase I Implementation Status - Arkansas

As of 12/31/01

County	Status	Phase I Service Requested	Phase I Turn-up date	Phase I Request with work in progress	Phase I Request on hold	Phase I Request completed in 6 mo window	If not deployed, why not?	Who are we waiting for?	Phase II Service Requested
Greene County	2	06/15/01		yes			Working on facility orders and translation issues with LEC		
Hot Spring County	3	02/14/01			yes		County has not signed agreement	County	10/29/01
Independence County	1	03/10/01	07/21/01						
Izard County							no request	County	
Jackson County							no request	County	
Jefferson County	2	04/20/01		yes			Working on facility orders and translation issues with LEC		
Lawrence County							no request	County	
Lee County							no request	County	
Lincoln County							no request	County	
Logan County							no request	County	
Lonoke County	1	03/10/01	07/21/01				no request	County	
Madison County							no request	County	
Marion County							no request	County	
Mississippi County							no request	County	
Monroe County	3	07/20/01			yes		County does not have a 911 system	County	
Montgomery County							no request	County	
Nevada County							no request	County	
Newton County							no request	County	
Ouachita County							no request	County	
Paragould/Greene County	3	02/05/01			yes		County has not signed agreement	County	
Perry County							no request	County	
Phillips County	2	03/29/01		yes			Working on facility orders and translation issues with LEC		
Pike County	3	03/13/01			yes		County has not signed agreement	County	
Poinsett County							no request	County	
Polk County	4	08/17/01		yes					
Pope County	1	03/10/01	07/21/01						
Prairie County							no request	County	
Pulaski County	1	03/10/01	07/21/01						

Status: 1-Deployed; 2-Cingular Past 6 Mo. Window; 3-PSAP or LEC past 6 Mo. Window; 4-Request within 6 Mo. Window

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# Cingular Wireless Phase I Implementation Status - Arkansas

As of 12/31/01

County	Status	Phase I Service Requested	Phase I Turn-up date	Phase I Request with work in progress	Phase I Request on hold	Phase I Request completed in 6 mo window	If not deployed, why not?	Who are we waiting for?	Phase II Service Requested
Randolph County							no request	County	
St. Francis County							no request	County	
Saline County	2	06/19/01		yes			Working on facility orders and translation issues with LEC		
Scott County							no request	County	
Searcy County							no request	County	
Sebastian County	3	06/26/01			yes		County has not signed agreement within 6 month window	County	
Sevier County	4	08/14/01		yes			No request	County	
Sharp County							No request	County	
Stone County							No request	County	
Union County							No request	County	
Van Buren County	4	08/07/01		yes			within 6 month window		4/4/01
Washington County	1	03/10/00	12/31/00				No request	County	
White County							No request	County	
Woodruff County							No request	County	
Yell County							No request	County	
<b>TOTALS</b>	68	30	6	14	10	0			2

### **DECLARATION OF EDGAR REYNOLDS**

I, Edgar Reynolds, President of Network Operations for Cingular Wireless LLC ("Cingular"), make this declaration in support of the "Supplement to First Quarterly E911 Implementation Report and Petition for Reconsideration" filed by Cingular on April 15, 2002 pursuant to the March 26, 2002 letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, to Brian F. Fontes, Vice President, Federal Relations, Cingular Wireless LLC. In my role as President of Network Operations, I oversee Cingular's efforts to provide Phase I location information in response to valid PSAP requests. I have reviewed the Supplement and with respect to Cingular's second, third and fourth responses, I declare under penalty of perjury that the information contained therein concerning Phase I deployment is accurate to the best of my knowledge, information and belief.

Executed April 15, 2002

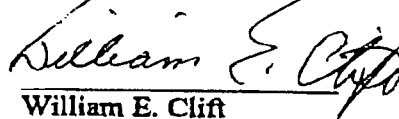
A handwritten signature in black ink, appearing to read "E. Reynolds", written over a horizontal line.

Edgar Reynolds  
President of Network Operations  
Cingular Wireless LLC

**DECLARATION OF WILLIAM E. CLIFT**

I, William E. Clift, Chief Technical Officer of Cingular Wireless LLC ("Cingular"), make this declaration in support of the "Supplement to First Quarterly E911 Implementation Report and Petition for Reconsideration" filed by Cingular on April 15, 2002 pursuant to the March 26, 2002 letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, to Brian F. Fontes, Vice President, Federal Relations, Cingular Wireless LLC. In my role as Chief Technical Officer, I oversee Cingular's efforts to implement Phase II location technologies. I have reviewed the Supplement and with respect to Cingular's first response, I declare under penalty of perjury that the information contained therein concerning Phase II deployment is accurate to the best of my knowledge, information and belief.

Executed April 15, 2002



William E. Clift  
Chief Technical Officer  
Cingular Wireless LLC



## CERTIFICATE OF SERVICE

I, Joy M. Taylor, do hereby certify that on this 15<sup>th</sup> day of April 2002, a copy of the foregoing **Supplement to First Quarterly E911 Implementation Report and Petition for Reconsideration** was served by U.S. Mail, first-class postage prepaid to the following:

W. Mark Adams  
Executive Director  
NENA  
422 Beecher Rd.  
Gahanna, OH 43230-1797

John Ramsey  
Executive Director  
APCO  
351 N. Williamson Boulevard  
Daytona Beach, FL 32114-1112

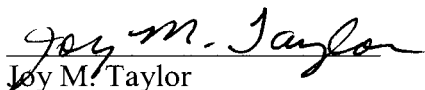
Evelyn Bailey  
President  
NASNA  
Vermont Enhanced 9-1-1 Board  
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\* VIA FACSIMILE

  
Joy M. Taylor